

No. 14/13/87-6Lab./572. In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Faridabad in respect of the dispute between the workmen and the management of M/s T.C. Haryana, Chandigarh *versus* Bhagwan :—

IN THE COURT OF SHRI U. B. KHANDUJA, PRESIDING OFFICER, LABOUR COURT-II, FARIDABAD'

Reference No. 188/90

between

THE MANAGEMENT OF M/S TRANSPORT COMMISSIONER, HARYANA, CHANDIGARH.

2. GENERAL MANAGER, HARYANA ROADWAYS, FARIDABAD.

versus

THE WORKMAN NAMELY SHRI BHAGWAN, S/O SHRI BIRMANAND, C/O SHRI BHIM SINGH YADAV, 65 A, CHAWALA COLONY, 100 FEET ROAD, BALLABGARH, DISTRICT, FARIDABAD.

Present:

Shri B. S. Yadav Authorised representative, for the workmen.

Shri Suraj Parkash, for the respondent.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947, (hereinafter referred to as 'the Act'), the Governor of Haryana referred the following dispute between the parties mentioned above, to this court for adjudication,—*vide* Haryana Government, Endorsement No. 19064—70, dated 8th May, 1990 :—

Whether the termination of services of Shri Bhagwan is legal and justified ? If not, to what relief, he is entitled to ?

2. The case of the workman is that he was employed by the respondent No. 2 as helper with effect from 1st April, 1989. He had been working to the satisfaction of his officers and had not provided any cause of complaint till 30th November, 1989. He had rendered continuous service for a period of 240 days. The management had not paid him wages for the month of July 1989 despite the fact that he had done work during that month. He had been working through out as a regular helper and so he requested the respondent No. 2 to pay him wages equal to the wages paid to a regular helper. The respondent No. 2 felt annoyed and terminated his services on 1st December, 1989 without issuing any charge-sheet and payment of retrenchment compensation. The impugned action of the respondent is violative of provisions of section 25 F of the Act. He is thus entitled to be reinstated into service with full back wages and continuity in service.

3. The respondent No. 2 submitted written statement dated 24th April, 1991 'stating therein that the workman had worked as helper on daily wages with effect from 1st April, 1989 to 30th June, 1989 and then from 1st August, 1989 to 24th September, 1989. His services were terminated on 25th September, 1989 as the same were no longer required. It was specifically mentioned that he had not worked during the month of July, 1989. It was denied that he had worked during the period from 25th September, 1989 to 30th November, 1989. It was thus, pleaded that he had not rendered service for a continuous period of 240 days and as such he was not entitled for retrenchment compensation. The action of the respondent, No. 2 is legal and valid and he is not entitled to any relief.

4. The workman submitted rejoinder dated 6th November, 1991 re-asserting the previous averments and 'denying the averments of the respondent No. 2.

5. On the pleadings of the parties, the following issue was framed :—

(1) Whether the termination of services of Shri Bhagwan is legal and justified ? If no, to what relief, is he entitled to (As per terms of reference).

6. Both the sides have led evidence,

7. I have heard the authorised representatives of both the sides and have also gone through the evidence on record. My findings on the aforesaid issue are as under:—

Issue No. 1:

8. The respondent No. 2 examined one witness Naresh Kumar clerk and he deposed that the workman was appointed with effect from 1st April, 1989 to 30th June, 1989 through letter Ex. M 1. Then the workman was appointed with effect from 1st August, 1989 to 31st August, 1989 through letter dated 7th August, 1989 Ex. M 2. Thereafter the workman was appointed for the period from 1st September, 1989 to 30th September, 1989 through letter dated 1st September, 1989 Ex. M 3. The services of the workman were terminated through letter dated 25th September, 1989 Ex. M 4. In the end, he stated that the workman had not been in the service during the month of July, 1989.

9. On the basis of aforesaid statement, it has been submitted on behalf of the respondent No. 2 that the workman had worked during the period from 1st April, 1989 to 30th June, 1989 and from 1st August, 1989 to 24th September, 1989. The workman had not rendered service for continuous period of 240 days and as such the impugned action the respondent No. 2 is legal and valid.

10. On the other hand, the workmen himself deposed that he had been continuously in the service of the respondent with effect from 1st April, 1989 to 30th November, 1989. He was not given appointment letter at the time of his appointment and letter Ex. W-1 regarding his appointment has issued after 3-4 months. He next stated that he had given application Ex. W-2 for the payment of balance wages and so he was paid wages upto 20th June, 1989. He further stated that he was in the service of the respondent when he had got letter dated 7th August, 1989 Ex. W 1. He also produced a photostat copy of attendance register for mark 'A' for the month of July, 1989. In the end, he stated that he had not been paid retrenchment compensation at the time of termination of his service.

11. On the basis of aforesaid statement, it has been submitted on behalf of the workman that it stands established that the workman had rendered service for a period of more than 240 days and as such his services could not be terminated without payment of retrenchment compensation. It is the admitted case of the respondent that no retrenchment compensation was paid to him. He is thus, entitled to be reinstated into service with full back wages.

12. It emerges from the position discussed above that the dispute which requires determination is as to whether the workman had worked during the month of July 1989 and during the period from 25th September, 1989 to 30th November, 1989. It is clear from the appointment letters Ex. M 1 and Ex. M 2 dated 7th August, 1989 that the workman was appointed from back date with effect from 1st April, 1989 to 30th June, 1989 and from 1st August, 1989 to 31st August 1989. It is also clear from these letters that the respondent did not issue appointment letter prior to the appointment of the workman. It can be taken from this position as well as report dated 2nd August, 1989 made on application of the workman Ex. W2 that these letters were issued by the respondent after seeking report of his lower staff about the period during which the workman had worked. The workmen confronted MW 1 Naresh Kumar with the copy of attendance card Ex. W 1 duly signed by Works Manager showing that the workman had worked during the month of July, 1989 and he admitted that it was issued by the department. The respondent No. 2 has not produced any other record to show that the workmen had not worked during the month of July 1989. It may be added that the workman summoned the relevant record and WW-2 Laxman Dass produced some record. The attendance register produced by him did not contain entries regarding the attendance of the workman during the month of July and August 1989. Admittedly the workman had worked during the month of August 1989, and as such it has to be taken that the respondent No. 2 had not maintained proper record. It is thus, concluded from the copy of addendance card Ex. W-1 and other attending circumstances enumerated above that the workman had worked during the month of July 1989.

13. The plea taken by the respondent No. 2 that the workman had worked only upto 24th September, 1989 appears to be correct. This observation finds support from the order dated 25th September, 1989 Ex. M-4 through which the services of the present workman along with other 38 workmen were terminated. It is not that the order was issued in respect of the present workman alone. It does not appeal to reason that the respondent could issue the termination order of 29 persons despite the fact they were actually allowed to work. The workmen has not placed on recordany document, such as copy of attendance card as was submitted by him with regard to the month of July 1989 that the workman had been working during the period from 25th September, 1989 to 30th November, 1989. The other plea of the authorised repreosntative of the workman that there was no necessity for the respondent No. 2 to issue letter dated 20th September, 1989 Ex. W-5 for the appointment of the workman with effect from 1st October, 1988 to 30th November, 1989 if the services of the workman were to be dis-continued with effect from 25th September, 1989 cannot be accepted. The letter Ex. W-5 was issued on 20th September, 1989. It may be possible that the respondent No. 2 wrongly assessed the work load and issued this letter. However, the fact remains that the services of the workman were terminated through letter dated 25th September, 1989 Ex. M-4 which appears to be quite correct as per position discussed above. It is thus, concluded that the workman had rendered service for a period from 1st April, 1989 to 24th September, 1989. The workman had not rendered service for a period of more than 240 days continuously with the respondent No. 2. The workman was not entitled to

retrenchment compensation. The impugned action of respondent No. 2 terminating the service of the workman is legal and justified. The workman is not entitled to any relief. Issue is decided in favour of the respondent and against the workman. The award is passed accordingly.

The 19th August, 1994.

U. B. KHANDUJA.

Presiding Officer,
Labour Court-II,
Faridabad.

Endorsement No. 2801, dated the 31st August, 1994.

A copy, with three spare copies, is forwarded, to the Commissioner and Secretary to Government, Haryana, Labour Department, Chandigarh.

U. B. KHANDUJA.

Presiding Officer,
Labour Court-II,
Faridabad.

No. 14/13/87-Lab./573.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. IV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Faridabad in respect of the dispute between the workman and the management of M/s. T.C. Haryana, Chandigarh *versus* Gajraj Singh

**IN THE COURT OF SHRI U.B. KHANDUJA, PRESIDING OFFICER, LABOUR COURT-II,
FARIDABAD**

Ref. No. 258/90

between

1. THE MANAGEMENT OF M/S TRANSPORT COMMISSIONER, HARYANA, CHANIDGARH
2. GENERAL MANAGER, HARYANA ROADWAYS, BALLABGARH DEPOT, FARIDABAD.

versus

THE WORKMAN NAMELY SHRI GAJRAJ SINGH, S/O SHRI DESHRAJ, VILLAGE KAMBRAWLI,
P.O. RASULPUR, TEHSIL PALWAL, DISTRICT FARIDABAD.

Present :

Shri Sudhir Chauhan, A/R, for the workman.

Shri R. P. Dagar, for the management.

AWARD

In exercise of the powers conferred by clause (c) of Sub Section (i) of Section 10 of the Industrial Disputes Act, 1947 (herein-after referred to as 'the Act') the Governor of Haryana referred the following dispute between the parties mentioned above to this court for adjudication,—*vide* Haryana Govt. Endst. No. 30369—75, dated the 30th July, 1990 :—

Whether the service of Gajraj Singh was terminated or he had left the job voluntarily having remained absent ? The relief, to which is he entitled as result of the findings ?

The case of the workman is that he was appointed as permanent driver on 15th March, 1988. He was not given any appointment letter by the respondent No. 2 at the time of his appointment. He was not issued any charge sheet or warning during the period of his service. On the night of 12nd October, 1988 he had sustained a bullet injury in his jaw by inadvertent firing of his own gun. He was taken to the B.K. Hospital, Faridabad on the same night. He was referred to A.I.I.M.S. next day and he had remained admitted there during the period from 15th October, 1988 to 7th September, 1988. He had sent medical certificate to the respondent No. 2 through postal receipt Ex. W-2. Thereafter he was referred to Army Hospital, Delhi and he had been under treatment in that hospital from 25th November, 1988 to 1st March, 1990. The medical certificates in support of his illness were Ex. W-3 to Ex. W-10. He has been sending the medical certificates to respondent No. 2

from time to time. He had also sent application Ex. W-11 for payment of salary for the month of October 1988. He reported for duty in March 1990 but he was not allowed to resume duty. Then he served demand notice Ex. W-12 on the respondent No.2 and also appeared Labour-cum-Conciliation Officer. The respondent No. 2 did not appear before him and so he referred to the matter to the Government. The persons junior to him in service were still working. He may be thus, reinstated into service and with full back wages.

3. The case of th respondent No. 2 as embodied in the written statement dated 24th April, 1991 is that the workman was appointed as driver w.e.f. 15th March, 1989 and he had continued till 26th October, 1989. His services were dis-continued being no longer required. He was again offered fresh appointment w.e.f. 15th February, 1989 but he did not join duty and so the order was withdrawn on 29th July, 1989. The workman was again offered appointment on 4th April, 1990 after the service of demand notice but he again did not bother to join duty. He is thus, not entitled to any relief.

4. The workman submitted rejoinder re-asserting the previous averments and denying the averments of the management.

5. On the pleadings of the parties, the following issues was framed :—

1. Whether the service of Gajraj Singh was terminated or he had left the job voluntarily having remained absent ? The relief, to which is he entitled as result of the findings ? (As per terms of reference).

6. Both the sides have led evidence.

7. I have heard the authorised representatives of both the sides and have also gone through the evidence. My findings on the aforesaid issue are as under :-

Issue No. 1.

8. MW-1 Devi Ram, clerk, the only witness examined by respondent No. 2, deposed that as per record the workan was selected for appointment as driver on 26th Feruary, 1986 as per order Ex. M-1. He was appointed as driver through letter Ex. M-2. His services were dis-continued through letter Ex. M-3. Then again he was appointed through letter Ex. M-4 but he had not resumed duty and so his services were dis-continued through letter Ex. M-5. In the end, he deposed that the workman was again appointed through letter Ex. M-6 but he had not resumed duty.

9. On the other hand, the workman confirmed his version on oath.

10. On th basis of aforesaid evidence, it has been submitted on behalf of the management that it stands proved that the workman had not rendered service for a continuous period of 240 days and as such he is not entitled to any relief.

11. On the other hand, it has been submitted on behalf of the workman that MW-1 Devi Ram admitted in his cross-examination that the workman was appointed against a permanent post. It is the reason that the workman was allowed to work after 15th September, 1988 i.e. upto 12nd October, 1988 despite the fact that in the appointment letter dated 15th March, 1988 it was stipulated that he was being appointed on *ad hoc* basis for a about six months. The services of the workman thus, could not be terminated without issuing chargeheet or holding enquiry even if he had been absent from duty. It is also reason that he was given fresh appointment through letter dated 15th February, 1989 Ex. M-4 despite the fact that he had not attended his duty w.e.f. 12nd October, 1988. Apart from this, the workman had submitted medical certificates to the respondent No. 2 from time to time as stated by him on oath. The services of the workman thus, could not be terminated or discontinued as was done by respondent No. 2. It is thus, clear that the respnodent No. 2 had illegally terminated the services of the workman and that he himself had not left the job voluntarily having remained absent from duty.

12. There is no dispute that the workman was appointed on 15th March, 1989. He might have been appointed against a permanent vacancy as stated by MW-1 on oath .However, the fact remains that the workman was appointed through letter dated 15th March, 1988 Ex. M-2 clearly stating therein that his appointment was purely temporary on *ad hoc* basis for a period of six months or till the arrival of approved candidate from S.S.S. Board Haryana. It can not be thus,taken that the respondent No. 2 illegally allowed the workman to sevice up to 12nd October, 1988. The wo kman has not stated on oath that he had applied for grant of leave for any particular period on account of his illness. He simply stated that he had sent medical certificates form time-to time . He even did not indicate the date on which he had sent the medical certificate. There is nothing on record to show that the workman had informed respondent No. 2 about his illness till 26th October, 1988. The perusal of the order dated 26h October 1988 Ex. M-3 clearly shows that the services of the workman were dis-continued along with six other drivers on the ground that their sevices were no longer required.

13. The respondent No. 2 again appointed the workman through letter dated 15th Feruary, 1989 Ex. M-4 along with 10 other drivers. The workman did not resume duty for a period of six months. He did

not inform the respondent No. 2 that he was unable to join duty to illness. He sent only one application dated 16th June, 1989 Ex. W-11 requesting for payment of wages to enable him to have proper treatment. The respondent No. 2 thus rightly passed order dated 19th July, 1989 Ex. W-5 for the discontinuance of the service of the workman w.e.f. 15th February, 1989 i.e. the date on which he was appointed.

14. For the reasons recorded above, it is held that the termination of services of the workman by the respondent No. 2 is legal and valid. He is thus, not entitled to any relief. The award is passed accordingly.

U.B. KHANDUJA,

The 26th August, 1994

Presiding Officer,
Labour Court-II,
Faridabad.

Endst. No. 2809, dated 31st August, 1994

A copy with three spare copies is forwarded to the Financial Commissioner & Secretary to Govt. Haryana, Labour Deptt., Chandigarh.

U.B. KHANDUJA,

Presiding Officer,
Labour Court-II,
Faridabad.

No. 14/13/87-6Lab./574.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947(Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Faridabad respect of the dispute between the workman and the management of M/s. Nanak Dairy Plant, Hodal Faridabad *versus* Vijay Pal.

IN THE COURT OF SHRI U.B. KHANDUJA, PRESIDING OFFICER, LABOUR COURT-II,
FARIDABAD

Reference No. 8 / 1993

Between

THE MANAGEMENT OF M/S. NANAK DAIRY PLANT, HODAL, FARIDABAD ... *Management*
versus

THE WORKMAN NAMELY SHRI VIJAY PAL, CAKE OF ANTRARASTRIYAVADI MAZDOOR UNION, G-162, INDRA NAGAR, SECTOR-7, FARIDABAD .. *Workman*

Presents :

Shri Jawahar Lal, Authorised Representative for the workman.

Shri Satish Kaushik, Authorised Representative for the management.

AWARD

1. In exercise of the powers conferred by clauses (c) of Sub-Section (i) of Section 10 of the Industrial Disputes Act, 1947(hereinafter referred to as 'the Act'), The Governor of Haryana referred the following dispute between the parties mentioned above, to this court for adjudication, *vide* Haryana Government Endorsement No. 4852-57, dated 3rd February 1987 :—

Whether the termination of services of Shri Vijay Pal, is legal and justified ? If not, to what relief, is he entitled to ? ,

2. The case of the workman is that he had been working as helper with the management for a period of 3 years. The management did not give the legal facilities to the workman. The management also used to adopt unfair labour practices. He was an active member of the union. The union filed complaint to the Labour Department and others for the grant of legal facilities to the workmen. The management felt annoyed and illegally terminated his services on 1st January, 1986. He is thus, entitled to be reinstated into service with full back wages.

3. The management submitted written statement dated 20th August, 1987 stating therein that the reference is bad in law because the services of the workman were never terminated. He was taken on daily wages basis for a casual work on 3rd December, 1985 and had worked upto 10th December, 1985. He was paid daily wages for the period he had worked. He had not rendered service for a period of 240 days with the management. He was thus, not entitled to any retrenchment compensation. Consequently, he is not entitled to any relief.

4. The workman submitted rejoinder dated 11th September, 1987 re-asserting the previous averments and denying the averments of the managements.

5. On the pleadings of the parties, the following issues were framed :—

1. As per reference.
2. Whether the reference is bad as alleged ?
3. Whether the workman has been gainfully employed ?

6. Both the sides have led evidence.

7. I have heard the authorised representatives of both the sides and have also gone through the evidence on record. My findings on the aforesaid issues are as under :—

Issues No. 1 & 2 :

8. Both of these issues are interlinked and as such are discussed together.

9. The management has examined only one witness Ram Lubhaya accountant and he deposed that the workman had worked only for a period of 6-7 days from 3rd December, 1985 to 10th December, 1985 on daily wages basis. He further stated that there was no Trade union in the company and that the workman had not filed any complaint against them to the Labour Department. On the other hand, the workman deposed facts mentioned above and he had also placed on record copies of complaint etc. Ex. W-1 to Ex. W-8.

10. It is the case of the workman that he had been employed with the management for a period of 3 years prior to 1st January, 1986. The management has not produced attendance register and other relevant record for the relevant period on the ground that the record pertaining to the period prior to 1984 had been burnt in the riots of 1984. MW-1 Ram Lubhaya however, admitted in his cross-examination that appointment letters used to be issued only to the regular employees. It means that no appointment letter was issued to this workman who was employed on daily wages basis. The workman thus, could not produce the appointment letter when it was not issued to him. It appears from the documents produced by the workman that several workmen including the present workman had filed complaint dated 26th April, 1985 Ex. W-6 to the General Secretary, Anterr ashtriya vadi Mazdoor union alleging therein that the management was resorting to unfair labour practice by not issuing appointment letters, attendance cards, ESI cards etc. It further appears that the present workmen and other workmen had submitted a complaint dated 1st May, 1985 Ex. W-2 to the Labour Inspector, Deputy Labour Commissioner and Labour Commissioner, Haryana, Chandigarh etc. alleging therein that the management was denying them the legal facilities. It is also clear from letter dated 9th August, 1985 Ex. W-5 that Labour Inspector had directed the management to appear before him on 17th August 1985 in connection with the enquiry into the allegations contained in the complaint dated 1st May, 1985. Similarly the Labour Commissioner, Haryana vide his letter dated 9th June, 1985 Ex. W-3 had directed the Deputy Labour Commissioner, Faridabad to enquire into the complaint dated 1st May, 1985 submitted by Dharampal and 48 workmen. The copies of applications for grant leave submitted by the workman dated 6th September, 1985 Ex. W-10 and 11th September, 1985 Ex. W-9 also show that the workman was on the rolls of the company in that period. Again the Deputy Labour Commissioner through his letter dated 24th June, 1985 Ex. W-5 had asked the management to appear before him in connection with the enquiry into the allegations contained in the complaint filed by Dharampal, Tejbir, Vijaypal present workman and others. All these documents clearly show that the workman had been in the employment of the management at least with effect from 26th April, 1985. It is thus, clear that the workman had rendered service for a continuous period of more than 240 days with the management w.e.f. 26th April 1985 to 31st December, 1985. The reference can not be taken to be bad in law. Admittedly no retrenchment compensation was given to the workman. The impugned action of the management terminating the services of the workman is illegal and unjustified. The workman is entitled to be reinstated into service with continuity in service and full back wages. Issue No. 1 & 2 are decided against the management and in favour of the workman.

Issue No. 3 :

11. The management has not led any evidence to prove that the workman has been gainfully employed. Issue No. 3 is decided against the management and in favour of the workman.

12. In view of my findings on various issues, it is held that the termination of services of the workman by the management is legal and unjustified. The workman is entitled to be reinstated into service with continuity in service and full back wages. It may be added that the plea taken by the management during the course of arguments that the factory has been closed since October, 1992 can not be accepted at this stage without evidence as the authorised representative of the workman stated otherwise. The award is passed accordingly.

Dated the 30th August, 1994

U. B. KHANDUJA,

Presiding Officer,
Labour Court-II, Faridabad.

Endorsement No. 2810, dated the 31st August, 1994

A copy with three spare copies, is forwarded to the Financial Commissioner and Secretary to Government, Haryana, Labour Department, Chandigarh.

U.B. KHANDUJA,
Presiding Officer,
Labour Court-II, Faridabad.